

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: KOCH, Earl D.

Art Group: 3671

Serial No.: 09/553,492

Examiner: K. Markovich

Filing Date: April 19, 2000

Atty Docket: 27136-01

For: TEMPORARY RAMP

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AFFIDAVIT OF JOHN L. BIRKY

I, John L. Birky, pursuant to 37 C.F.R. § 1.132, do state and declare as follows based upon my personal knowledge and/or belief:

1. I am a construction superintendent and estimator for Rowe Construction Co., a division of R. A. Cullinan & Son, Inc. (hereinafter "Cullinan"), now a division of United Contractors Midwest (UCM).

2. I have been involved in the construction industry for over 30 years.

3. Neither I nor Rowe Construction Co. have a financial interest in the above identified pending patent application of Mr. Koch.

4. Neither I nor Rowe Construction Co. have a financial interest in E Z Road, Inc.

5. Rowe Construction Co. acquired 19 ramp segments from Cullinan/UCM for use on its road construction projects. These ramp segments were originally purchased by Cullinan/UCM from E Z Road, Inc.

6. The E Z Road ramp segments acquired from Cullinan/UCM include a substantially horizontal lower surface adapted for contacting the roadway surface during use, an upper surface having a slope of 1:20 which contacts the vehicle wheels during use, and side edges having complementary coupling formations adapted for removably interlocking with abutting side edges of adjacent ramp segments.

7. The E Z Road ramp segments are made of a rubber material and each segment is small enough such that it will fit in the back of a conventional pickup truck bed and is light enough to be easily handled by a single laborer during installation and removal.

8. Prior to acquiring the above described E Z Road ramp segments, it was the practice of Rowe Construction Co. to use hot-mix or cold-mix asphalt pavement to create temporary ramps at pavement drop-offs and around other obstructions such as manholes during road construction and repair projects. These asphalt pavement ramps would then have to be broken up and removed from the roadway prior to the final paving operation.

9. The above-described E Z Road ramps are now used on many of Rowe Construction Co.'s road construction and repair projects.

10. Through the use of the segmented E Z Road ramps, Rowe Construction Co. has achieved significant cost savings compared to the use of conventional asphalt pavement ramps.

11. The ability to use the segmented E Z Road ramps over and over again on different jobs results in further savings in material and labor compared to the use of conventional asphalt pavement ramps.

12. I am aware of the single-piece manhole ramps manufactured and sold by Work Area Protection Corporation (WAPC).

13. To my knowledge and belief, with over 30 years of experience in this industry, neither WAPC nor any other manufacturer, has ever offered a manhole ramp or butt-joint ramp comprised of segmented interlocking ramp segments for use during road repair or construction. Furthermore, I am not aware of any contractor that has ever used a segmented manhole ramp or segmented butt-joint ramp prior to the introduction of such ramps by E Z Road, Inc.

14. Based on my information and belief, the E Z Road temporary manhole-type ramps offer significant advantages not available with the single-piece, WAPC manhole ramps.

Specifically:

- A. As identified in the attached Exhibit A, the single-piece, WAPC manhole ramps are relatively heavy, weighing approximately 70 pounds. Due to this weight, the 48 inch diameter single-piece ramps would be too cumbersome for a single workman to easily handle. Thus, the installation and removal of WAPC ramps would likely have to be performed by at least two workman. The segmented E Z Road ramps, on the other hand, are easily handled by a single workman, thereby saving significant labor costs and minimizing the number of persons exposed to vehicle traffic;
- B. Based on the measurements provided in WAPC's product literature of Exhibit A, the WAPC manhole ramps have a slope between 1:5 and 1:6. Ramps with such a steep slope may not be used on many road construction projects subject to higher speed vehicle traffic which typically require ramp slopes no greater than 1:20.
- C. If the WAPC manhole ramps were available with ramp slopes of 1:20 (which, to my knowledge they are not), the single-piece construction of the WAPC manhole ramps would have to be nearly 106 inches or 8'-10 inches in diameter. Such a large diameter single-piece ramp would require multiple laborers and lifting equipment to install and remove. Furthermore, such a large diameter ramp would be difficult to transport in a conventional pick-up truck.

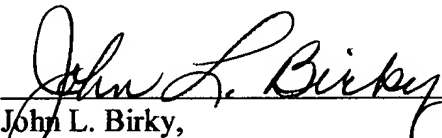
15. With my 30 years of experience, I would consider myself as having at least the equivalent experience, training and knowledge in the industry as a person that would be considered to be "a person of ordinary skill" in the road repair and construction field.

16. Accordingly, as a person of ordinary skill in this field, I believe that the segmented manhole ramps and butt-joint ramps manufactured and sold by E Z Road, Inc. as identified above are a significant improvement over the conventional asphalt pavement ramps and a significant improvement over the single-piece WAPC manhole ramps.

17. Based upon my personal knowledge and belief, the segmented temporary ramps manufactured by E Z Road, Inc. as identified above fulfill a long-felt but unresolved need in the road construction industry which is not satisfied by the single-piece WAPC manhole ramps or any other devices or methods used in the industry, namely, to provide a temporary ramp for use during road construction and repair operations that: (1) can be quickly and easily installed and removed by a single laborer without the need for equipment to install and remove the ramp, and (2) can be easily transported in segments for reuse on another job site in a conventional pickup truck bed.

18. Based upon my personal knowledge and belief, the use of the E Z Road segmented butt-joint ramps and segmented manhole ramps allows Rowe Construction Co. to obtain a competitive advantage over road construction contractors that continue to use conventional asphalt pavement ramps or the single-piece WAPC manhole ramps.

Date: 7-30-02

  
John L. Birky,  
Construction Superintendent and Estimator  
Rowe Construction Co., a division of  
R. A. Cullinan & Son, Inc. and UCM

STATE OF Illinois )  
COUNTY OF Lazarell ) SS.:

Subscribed and sworn to me on this 31st day of July, 2002 by  
John L. Birky, who acknowledged to me that he is a Construction Superintendent  
and Estimator for Rowe Construction Co.

Stephanie Benson  
Notary Public

782869.1

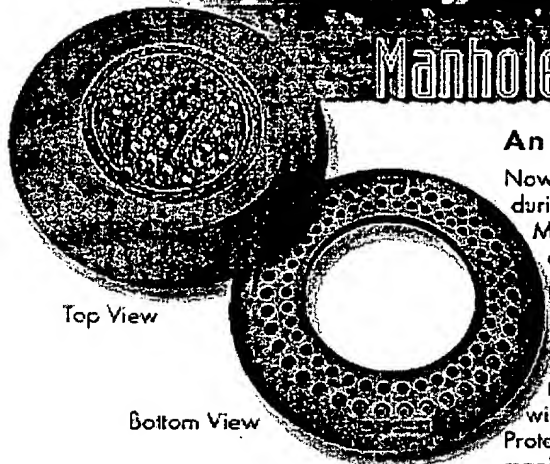




# WORK AREA PROTECTION CORPORATION

Tough enough  
for any work area

## Manhole Riser Protection Ring



Top View

Bottom View

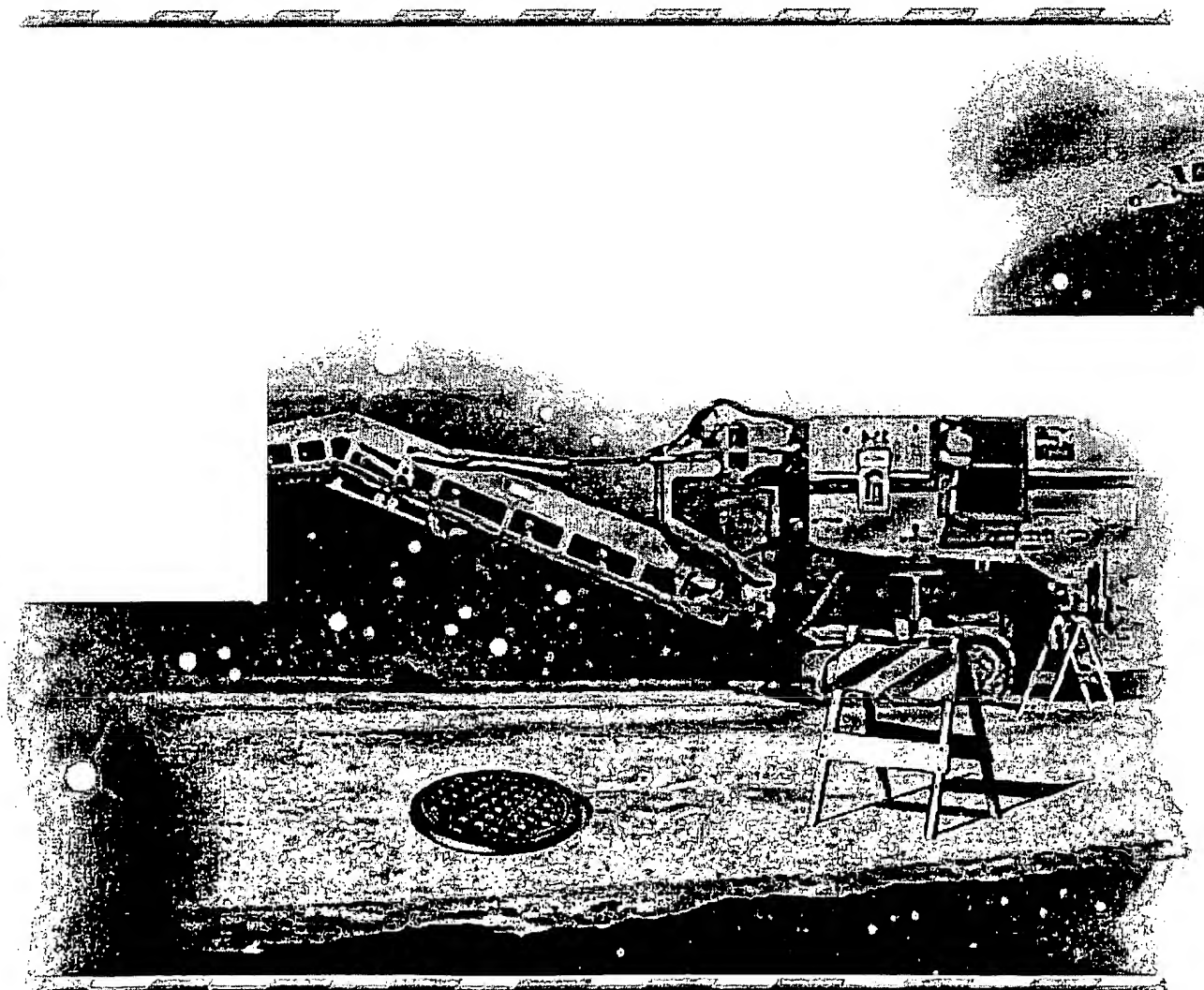
### An easier alternative to cold patching

Now you can smooth over those exposed manhole risers during road construction projects in a matter of seconds.

Made of tough, durable rubber, these Protector Rings fit securely around manhole risers. They won't shift or slip. Just drop them into place and remove them simply by picking them up.

You'll save money too, because these Protector Rings can be used again and again. They can easily be stacked to save space. Their subtle gradient design enables motorists to drive over exposed manhole risers smoothly and safely without damaging their tires or vehicles. What's more, these Protector Rings come in different sizes to accommodate manhole risers of different diameters.

Below illustrates the simple use of this revolutionary time/ money saving product.



• eliminates need for cold patching

• reusable

EXHIBIT

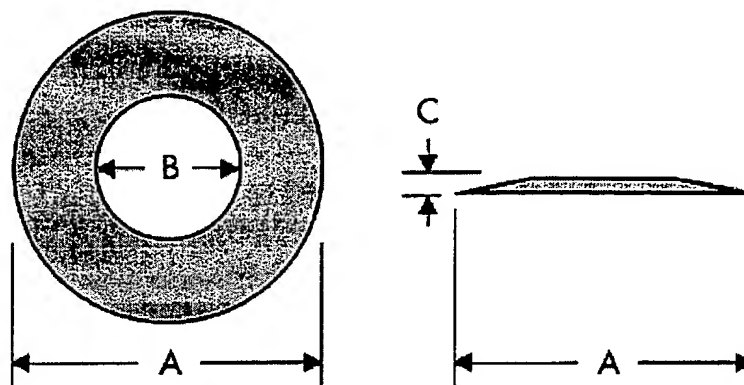
A

Last Updated:  
27-Jun-2002

- fast, simple installation
- snug fit
- provides smooth riding
- stackable for storage
- made of durable 100% recyclable rubber
- available in different sizes

**SPECIFICATIONS:**

Model Number	Outer Diameter	Inside Clearance	Thickness	Weight
	A	B	C	
MPR 26	48"	26"	2"	68 lbs
MPR 10	29"	10"	2"	29 lbs



**Material:** 100% recycled rubber  
**Density:** 0.6 oz/cu in. ASTM C642  
**Fabrication:** compression molded deposit  
**Durometer hardness:** 66A ASTM D2240  
**Tensile strength:** 300 psi ASTM D412  
**Elongation:** 90% ASTM D412  
**Brittleness:** 40°F ASTM D746  
**Coefficient of thermal expansion:** 8 x10.5 in/in/F ASTM C531

**Savings per unit installation**

METHOD	Cost per Manhole Avg. Price per Contractors
Manhole Protector Ring (Price includes labor and cost of MPR using a life cycle of 50 times used)	\$ 5.75
Take out riser and plate it	\$500.00
Leave existing apron	\$200.00
Cold Patch or Hot Mix	\$200.00
Use Grindings (Equipment and Labor, excludes liability)	\$ 30.00
Use Barricade (Barricade Life at 10 times, excludes liability)	\$ 5.45

The MUTCD requires that a manhole exposed during a milling operation be protected by a slope of asphalt if the manhole is exposed over .5".

Reusable Manhole Protector Ring is recommended to give protection to manholes exposed up to 2.5" high.

<b>Part # - MPR26 - 26" hole diameter, 2" high and weighs 68 LB.</b>
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<b>Part # - MPR10 - 10" hole diameter, 2" high and weighs 29 LB.</b>
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Exclusively manufactured under Patent #5,308,188

**[Download Specifications Flyer PDF. Click Here!](#)**

If you have a problem downloading this file:  
Hold down the Shift key (Windows and UNIX) or  
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BEST AVAILABLE COPY

# Manhole Protector Ring

Cost effective

Eliminates need  
for cold  
patching

Fast, simple  
installation

Grip tight design

Provides for  
smooth riding

Reusable

Stackable  
for storage

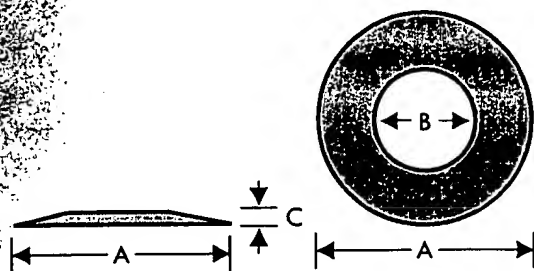
Made of durable  
100% recyclable  
rubber

Available in  
various sizes

Tough enough  
for any work area



# Manhole Protector Ring Specifications



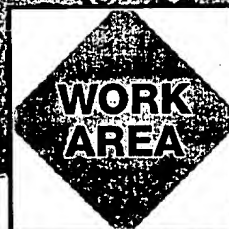
Model Number	Outer Diameter	Inside Clearance	Thickness	Weight lbs.
	A	B	C	
MPR 26	48"	26"	2"	68
MPR 10	29"	10"	2"	29

An easier alternative to cold patching

Material:	100% recycled rubber	Tensile strength:	300psi ASTM D412
Fabrication:	compression molded composite	Elongation:	90% ASTM D412
Density:	0.6 oz/cu in. ASTM C642	Brittleness:	-40°F ASTM D746
Durometer hardness:	65A ASTM D2240	Coefficient of thermal expansion:	8x10 <sup>-5</sup> ASTM C531

Now you can smooth over those exposed manhole risers during road construction projects in a matter of seconds. Made of tough, durable rubber, these Protector Rings fit securely around manhole risers. They won't shift or slip. Just drop them into place and remove them simply by picking them up. You'll save money too, because these Protector Rings can be used again and again. They can easily be stacked to save space. Their subtle gradient design enables motorists to drive over exposed manhole risers smoothly and safely without damaging their tires or vehicles. What's more, these Protector Rings come in various sizes to accommodate manhole risers of different diameters.

Grip tight design ensures Manhole Protector Rings won't shift or slip.



## WORK AREA PROTECTION CORPORATION

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